IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

ST.Rev..No. 129 of 2005()

TA.3/2004 of S.T.A.T.ADDL.BENCH-II,ERNAKULAM
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REVISION PETITIONER(APPELLANT/ASSESSEE)

M/S.METRO TYRES LTD., V/944,
PALLIYARA ROAD, KOCHI, REP. BY
V.V.KARUNAKARAN, BRANCH MANAGER.

BY ADV. SRI.VIJAYAN. K.U.

RESPONDENTS: RESPONDENT/REVENUE:

STATE OF KERALA, REP. BY
SECRETARY TO GOVERNMENT, TAXES DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRU,GEORGEKUTTY MATHEW

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 04/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & K.P.BALACHANDRAN,JJ.

S.T.Rev.No.129 of 2005

Dated this the 4th day of December, 2006

J U D G M E N T

Raman, J

The assessee is a registered dealer borne on the rolls of the Assistant Commissioner, Assessment, Special Circle, Mattanchery. For the assessment year 95-96, he filed a nil return. The books of accounts of the dealer were collected and verified by the Assessing Officer. It was found that an amount of Rs.3,35,369/- was not supported by F Form and in the absence of any documents it is treated as inter state sale. Likewise, the defective fans said to have been sent to Noida in UP for an amount of Rs.10,66,858/- was contended to be purchased from out of the state. In the absence of supporting evidence it was treated as inter state sale.

2. However, the branch transfer effected to outside the state for Rs.2,67,373 was found to be supported by F Form and accordingly exemption was granted. Accordingly, it was proposed to complete the CST assessment for 95-96 estimating the

interstate sale on Rs.14,02,227/- and tax at the rate of 11%. On issuing notice, the assessee filed his objection contending that the rate of defective for Rs.3,35,360/- is properly covered by documents, but the assessee did not however produced F form for the said transaction before the Assessing Officer till the order of assessment was passed. In the absence of F Form, the claim of the assessee in this regard was disallowed. The contention that an amount of Rs.10,66,858/- representing value of the defective fans sent to Noida, it was found that the assessee purchased the goods. For that also, there was no F Form produced. Hence this claim was also rejected. The inter state sales tax due was accordingly assessed. Aggrieved thereby, the petitioner preferred an appeal before the Deputy Commissioner (Appeals). The main challenge was that the return of the defective fans to the consigner outside the Sate was on proper documents. According to him, he produced all the documents before the Assessing authority which has not been properly considered by him. The defective fans for Rs.10,66,858/- were sent to the factory at Noida under instructions from the sellers and that the transfer was supported by proper documents and the Assessing Officer has not

considered the evidence so produced. These contentions were examined by the appellate authority. It was found that both for repair work and return, however the interstate transfer from Kerala was not supported by declaration in F Form and as such the assessee was not entitled to the benefit of treating this as a branch transfer. The appellate authority found in such circumstances, that there is no merit in this appeal and dismissed.

3. The appellant further challenged the correctness of that order in second appeal before the Tribunal. The Tribunal again considered this matter. The finding of the first appellate authority was extracted in page 4 of the Tribunals order. The Tribunal after referring to the appellate order found that the appellant had not produced F Form to produce stock transfer, even though that by itself may not be sufficient to prove stock transfer and that it is the physical transport of goods under Section 6A of the C.S.T.Act. Since the appellant did not produce any documents to prove physical transfer of goods across the boundary and in the absence of F Form, claim was disallowed and the appeal was also dismissed as the Tribunal did not find any merit in the appeal. It is challenging these orders by the

authorities below, that the revision is filed.

4. The learned counsel appearing for the revision petitioner contended before us that various other documents were also produced before the Tribunal, but there is nothing discerning from the file that any such documents were produced. At any rate he has no case that 'F' Forms relating to the transfer of goods was produced.

5. Admittedly, when the petitioner’s claim is that the defective goods were transferred to their main office at Noida in UP, he was bound to support the same by producing F Forms. The assessee had as a matter of fact produced F Form in respect of some other transaction. But in the present case, the claim was rejected in the absence of any F Forms. Petitioner has no explanation as to why the F Forms could not be produced. The authorities below in such circumstances has rightly held that the claim for exemption from the inter state sale being a branch transfer and the finding that it is not supported by any proper documents are pure questions of fact with which this court cannot interfere in the revision stage nor is there any sufficient ground to do so.

6. The burden of proving that the movement of the goods from one state to another is not by way of sale but was only a transfer otherwise than by way of sale, lies on the assessee. Further the manner of proof to be adduced is also specified in 6A of the C.S.T.Act as one prescribed. By fiction of law, it will be deemed to be an interstate sale, in case he does not discharge his burden in the manner prescribed by rules. In this case, the assessee having failed to discharge his burden by producing 'F' form, there is no error in the order of the Tribunal.

The revision fails and accordingly dismissed.

P.R.RAMAN, JUDGE

K.P.BALACHANDRAN, JUDGE

Rp